

REMARKS

Examiner Demeree issues the following two statutory final rejections:

- (1) Claims 10, 12, 13 and 16-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brizzi (U.S. 6,755,300 B2) in view of Voelker *U.S. 3,240,845 A);
- (2) Claims 11, 14, 15 and 19-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brizzi in view of Byrne (U.S. 941,356 A).

Applicant respectfully **traverses** these rejections insofar as they may be applied to the new independent claims 24 and 25 and their respective dependent claims.

This traversal is primarily based on the Examiner's apparent failure to recognize the deficiencies in Brizzi's teaching relative to the subject matter of the claimed invention as recited, for example, in new independent claims 24 and 25 (which replace canceled claims 10 and 11).

I. The pack according to the claimed invention

1. The gist of the claimed invention concerns a new configuration of a hinge-lid pack, specifically by means of a "three-dimensional" design. The cross-sectional contour of the pack is provided with a new, hitherto unknown shape by means of round sections which project either outwardly or inwardly. Of particular importance in this regard is the embodiment pursuant to Fig. 1, Fig. 2 and Fig. 4, i.e., having upright pack edges or longitudinal edges 29, 30 which are configured as outwardly directed round sections which project beyond the plane of the pack walls. This can be clearly seen in Fig. 4 and Fig. 10 of the drawings.

The transverse edges 31, 32, 33, 34 in the region of base wall 15 and end wall 18 can, as an alternative or supplement, have the same configuration as the upright longitudinal edges. But

the most sensible pack design is one in which the upright longitudinal edges 29, 30 or the transverse edges 31..34 are configured with the corresponding profile.

Thus, feature b) in new claims 24 and 25 recite:

*b) the longitudinal edges (29, 30) and/or the transverse edges
(31, 32, 33, 34) ..*

2. For understanding the claimed pack shape it should be noted with respect to the outstanding Office Action that the claimed deformations are outward or inward bulges in the pack walls. These are, therefore, not related to the configuration of the pack edge itself but rather to an area of deformation of the pack walls in the region of the pack corners. The deformed area, directed outwardly or inwardly in a circular-like shape, is bordered by intermediate edges 36, 37 which form a delimitation between the flat walls and the bulged, circular-shaped projections or recesses.

3. By virtue of the claimed invention's configuration of a hinge-lid type of cigarette pack, a pack shape is created which is striking and appealing in its outer appearance. In a technical sense, the "three-dimensional" design of the pack corners results in a significant increase in the dimensional stability of this pack, even when relatively thin packaging material is employed. This applies in particular to the pack pursuant to Fig. 1 and Fig. 2, in which the pack edges (Fig. 4) act as "supporting columns" at the four corners or edges.

II. The prior art applied in the Office Action

The primary rejection is based on US 2003/0047471 to **Brizzi** in conjunction with US 3 240 845 to **Voelker**. This prior art has been interpreted incompletely and inaccurately to

the detriment of the pack according to the claimed invention. The skilled person in the art would be unable to discover in Brizzi, Voelker and Byrne the claimed features of the pack, even by taking a combined view of the references. More specifically:

1. Brizzi relates to a special problem in the production and design of (cigarette) packs of the hinge-lid type. The problem is set forth in paragraphs [0005] and [0006]. Brizzi's intention is to reduce restoring forces (springback) by the described measures. In paragraph [0006] Brizzi notes that attempts had already been made to achieve a correct configuration of folding lines but with unsatisfactory results, as shown by the Brizzi specification.

The gist of the solution proposed by Brizzi is stated in paragraph [0008]. Accordingly, the pre-formed or pre-embossed fold segments are to be configured as follows:

.. having at least two different degrees of weakness.

This solution of Brizzi, namely to configure embossing or folding lines with "two different degrees of weakness", is applied in a cigarette pack having the embodiment of an "octagonal pack". The pack form is shown in Fig. 1 to Fig. 3. Brizzi makes reference to EP-B1-204 933, the European patent of the "octagonal pack". A US patent was granted for this pack.

The constructional feature of this type of pack, which is crucial for its folding operations and for the configuration of the folding lines, comprises oblique, narrow material strips 12 (referred to in Brizzi as "four flat connecting walls 12"). The wall strips are arranged at an (outer) angle of 45°, with the result that an obtuse angle arises at the inner side. In the case of such folds, namely with the formation of folded edges having an obtuse angle, the restoring forces of the packaging material have a greater effect than folded edges having a right-angle

cross-section. Brizzi focuses on the problem involving the formation of correct folding lines and the reduction of restoring forces in packs having specially designed pack edges, in particular in the case of octagonal packs. The special problem of this pack shape having two parallel folding lines spaced at a small distance from one another is described in paragraph [0025], among others, of Brizzi.

Brizzi is of the view that the problem can be answered by pre-formed or pre-shaped folding lines having a different “degrees of weakness”. The specific solution is presented in paragraph [0029]. Accordingly, folding segments 17b, 17d and 17f, on one hand, and folding segments 17a, 17c and 17e, on the other hand, are provided with different degrees of weakness. Shown in Fig. 3 are various embodiments for the folding segments, with an exaggerated detail being doubtlessly present in the drawing because the folding segments cannot be represented in a 1:1 ratio. For the unbiased person skilled in the art, Fig. 1 and Fig. 2 inform that the folding or embossed lines 17 are basically configured in the conventional manner, and in any case lack projections or recesses which extend beyond the plane of the pack walls. Brizzi provides very exact details as to how the individual configurations of the “segments 17” are to be assigned to different folding line. These details can be taken from the cited paragraph [0029]. Accordingly, the folding segments 17b, 17d and 17f are *“weakened to a greater extent than the other fold segments”*. This means that in the illustration pursuant to Fig. 3a and Fig. 3b folding segments labeled with the reference number 17d have a greater degree of “weakness”, while folding lines labeled with 17a are less “weak”.

In terms of the embodiment of a hinge-lid octagonal pack as studied by this person of ordinary skill in the art, the folded edges designated in Fig. 1 as 17b, 17d and 17f are configured in the embodiment labeled as 17d in Fig. 3. This means that in the finished pack (Fig. 2), the configuration of the folded edges arranged at the front side between walls 9 and 12 correspond to 17d in Fig. 3a, Fig. 3b or Fig. 3c. At the rear side the folding lines 17b (Fig. 1) are taken effect, but here the folding lines facing the pack rear wall are configured with this greater degree of weakening. Here, it is evident that Brizzi assigns the alternative folding lines exclusively according to considerations of folding technology. But the result is a pack which is shown in sufficient clarity in Fig. 2: Neither the front nor the rear side of the pack is configured with projections in the region of the folded edges.

In sum, Brizzi provides the skilled person in the art with the following information:

- a) Brizzi relates to the configuration of folding lines of a hinge-lid pack, but with the exclusive aim of reducing the restoring forces of the packaging material;*
- b) Brizzi emphasizes that this problem arises in hinge-lid packs having a complex edge structure, namely octagonal packs having two parallel folding lines arranged at a small distance from one another between walls that are directed at an obtuse angle to one another.;*
- c) the teaching of Brizzi identifiable by the expert in the art is essentially that folding lines on the respectively adjacent and parallel corners are*

to be configured differently, specifically with respect to the arising restoring forces;

d) the overall content of Brizzi, in particular the drawings of the embodiments, shows that the design of the folding lines fail to produce pack corners featuring distinct projections which project beyond the plane of the respective walls.

Brizzi is therefore irrelevant to the claimed invention (claims 24 and 25).

2. Voelker is even less relevant. Voelker relates to a special packaging material which, in contrast to the "thin cardboard" of the present cigarette packs, has thick walls, namely comprising an outer face 11, an inner face 13 and an intermediate "thick" core of foam 12. The outer faces 11, 13 are comprised of "kraft paper". The overall result is a sandwich structure of the packaging material, which cannot be folded at will. Special measures must be taken for its folding. The multi-layer structure forms two points of constriction spaced apart from one another and which permit a corner fold (Fig. 1).

It is not the intention of Voelker to achieve a special structure of thin-walled packaging material in which the material is embossed or permanently deformed to achieve a bulge extending beyond the plane of the packaging material. In Voelker the corner construction (Fig. 1) always remains within the predetermined corner of the corner, i.e. within the plane determined by the outer faces 11.

Voelker should also not be regarded in context with the solutions proposed by Brizzi. Brizzi employs the standard packaging material of "thin cardboard" and relates to restoring

forces. To this end, special folding lines having different degrees of material weakness are employed. In Voelker, the object is to configure a multi-layer sandwich structure of “thick” packaging material in such a manner that a corner fold is possible.

The “inward circular recession” of Byrne does not provide the above-described deficiencies in Brizzi’s disclosure.

The cited prior art fails to provide the ordinarily skilled person with even a suggestion that might lead to the claimed invention.

In summary, then, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 103(a), because the Brizzi, Voelker and Byrne references do not disclose, in any combination or even suggest or predicts **all of the limitations** of at least the new independent claims 24 and 25, whereby Applicant respectfully submits that this prior art is **incapable of rendering obvious** the subject matter of any of the presently pending claims 12-25.

Applicant calls the Examiner’s attention to the IDS filed on April 10, 2009, and to the TORTA letter attached thereto.

AMENDMENT UNDER 37 C.F.R. § 1.114(c)
U.S. Application No.: 10/533,240

Attorney Docket No.: Q87659

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

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